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AUG 14 2002

CASE:GLS: 143629 -02
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MEMORANDUM FOR SUSAN E. GILBERT
ACTING CHIEF, GRANT ADMINISTRATION
WAGE & INVESTMENT OPERATION DIVISION
STAKEHOLDER PARTNERSHIPS, EDUCATION &
COMMUNICATION (W&I:SPEC)

FROM: Donald M. Suica
Chief, Public Contracts and Technology Law Branch (GLS)
Internal Revenue Service

SUBJECT: Low-Income Tax Clinic Grants Matched with Indian Tribal Organizations Grant Funding [SPEC]

This responds to your request for expedited guidance on whether Low-Income Tax Clinic (LITC) grant recipients can use Indian Tribal Organizations Grant funding as matching funds for LITC purposes.

Conclusion:

Indian tribal grant funding can be used for matching purposes "for any other Federal grant programs which contribute to the purposes for which ... [Indian tribal grants] are made." 25 U.S.C. § 450h(c). The purposes for which Indian tribal grants are authorized are sufficiently broad that it would appear reasonable for the Service to construe LITC grants as compatible with the purposes for which Indian tribal grants are made. [redacted]

Discussion:

As noted in the recent memorandum opinion on "Low-Income Tax Clinic Grants Matched with Legal Services Corporation Funding," GLS-137825-02, issued July 19, 2002, the rule that generally prohibits the use of Federal funding in meeting Federal grant matching requirements is found in Section 23 of OMB Circular No. A-110, the "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations."

This provision says that "all contributions" shall be counted toward cost sharing or matching when "all criteria" listed therein are met, including the criterion that sums:

> Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

Since the inception of the LITC grant program in 1998, the Service's Low-Income Tax Clinic Grant Application Package and Guidelines, re-issued annually as Pub. 3319, has incorporated by reference the entirety of OMB Circular No. A-110. Pub. 3319 also has always included a restatement or paraphrase of the OMB general rule: "Funds from other federal grants cannot be counted as matching funds **unless authorized by statute.**" *See, e.g.* Pub. 3319 (Rev. 4-2002), II(B)(2), fifth bullet, p. 7 (emphasis added).

OMB Circular No. A-110 cites no federal statute, or other authority, as the source of its general rule. The Comptroller General has opined that this rule is one of common-sense; to hold otherwise -- unless there is an express exception or some other indicia of an over-riding reason – defeats the requirement that costs be shared. Decisions of the Comptroller General are not binding upon executive branch agencies. *See* Bowsher v. Synar, 478 U.S. 714, 727 -32 (1986). Nevertheless, the opinions of the General Accounting Office (GAO) constitute a valuable and informative body of precedent. This is particularly so where the matter involves the propriety of the commitment, obligation, and expenditure of appropriated funds.

On the subject of matching one grant with funds from another, GAO's Principles of Federal Appropriations Law, (2nd Ed., Vol. II, p. 10-62) says:

> An important and logical principle is that neither the federal nor the non-federal share of a particular grant program may be used by a grantee to match funds provided under another federal grant program, unless specifically authorized by law. In other words, a grantee may not (1) use funds received under one federal grant as the matching share under a separate grant, nor may it (2) use the same grantee dollars to meet two separate matching requirements. [*Citations deleted to four decades of GAO opinions; see, e.g.*, 56 Comp. Gen. 645 (1977)]. A contrary rule would

> largely nullify the cost-sharing objective of stimulating new grantee expenditures.

The discussion of this issue by GAO includes the note: "Normally, exceptions to the rule are in the form of express statutory authority." Such an exception, in fact, does exist with respect to Indian tribal organizations grants, which are authorized by 25 U.S.C. § 450h. Subsection (c) of 25 U.S.C. § 450h says:

> The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section [25 U.S.C. § 450h] are made.

Grants under 25 U.S.C. § 450h are made for "the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of ... financial management ... [and] the improvement of tribally funded programs or activities.)"

[redacted]

DP

If you or others have any questions about this opinion, [redacted] you may contact Dave Ingold by telephoning 202 283-7952.

DP

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